Doc #57

U.S. DISTRICT COURT FILED FEB 16 2001 S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

- against -

A $20 GOLD COIN, KNOWN AS A 1933 "DOUBLE EAGLE" MINTED AT THE UNITED STATES MINT IN PHILADELPHIA, PENNSYLVANIA,

Defendant-in-Rem.

---

96 Civ. 2527 (AKH)

SETTLEMENT AGREEMENT

A.F

This agreement is entered into this 25th day of January, 2001 by and between plaintiff United States of America, by its attorney, Mary Jo White, United States Attorney for the Southern District of New York, (the "Government") and claimant Stephen C. Fenton.

WHEREAS, the Government seized the defendant-in-rem 1933 $20 Double Eagle gold coin (the "In Rem 1933 Double Eagle") on February 8, 1996,

WHEREAS, on April 9, 1996, the Government commenced a civil action, 96 Civ. 2527, in the Southern District of New York seeking forfeiture of the In Rem 1933 Double Eagle, and on May 14, 1999 filed the third-amended complaint adding a declaratory judgment claim (the "Action");

WHEREAS, Mr. Fenton filed a verified claim dated April 22, 1996 to the In-Rem 1933 Double Eagle, and on May 19, 1999 filed an answer to the third-amended complaint;

WHEREAS, the Government and Mr. Fenton desire to settle the Action, for good and valuable consideration, upon the terms and conditions contained herein (the "Agreement");

NOW, THEREFORE, the parties, in consideration of the mutual covenants and agreements contained herein and intending to be legally bound hereby, agree as follows:

1. The Government shall voluntarily withdraw with prejudice and without costs all of its forfeiture claims and allegations.

2. Pursuant to the declaratory judgment claim, the United States Mint Public Enterprise Fund by this Stipulation and Order shall have title to the In Rem 1933 Double Eagle, and the In Rem 1933 Double Eagle will be offered for sale in an expeditious and reasonable manner. The parties further agree that:

a. The United States Mint Public Enterprise Fund and Mr. Fenton will retain equal rights to determine the manner and terms of the sale of the In Rem 1933 Double Eagle, including the reasonable costs to be incurred in connection with that sale;

b. The sale of the In Rem 1933 Double Eagle shall take place on mutually agreeable terms in a commercially reasonable manner to be agreed upon by the United States Mint Public Enterprise Fund and Mr. Fenton;

c. Both the United States Mint Public Enterprise Fund and Mr. Fenton agree they will act to maximize the sale price of the In Rem 1933 Double Eagle; and

d. To that end, both the United States Mint Public Enterprise Fund and Mr. Fenton agree that if the In Rem 1933 Double Eagle is sold by public auction, a reasonable minimum sale price will be agreed upon.

3. Upon the sale of the In Rem 1933 Double Eagle, the United States Mint Public Enterprise Fund and Mr. Fenton will share equally in the net proceeds from the sale of the 1933 Double Eagle. The proceeds from the sale of the In Rem 1933 Double Eagle shall be deposited in the United States Mint Public Enterprise Fund, and then distributed in one of the following manners:

a. If the United States Mint Public Enterprise Fund and Mr. Fenton agree to sell the coin at public auction and it sells in that manner, then the United States Mint Public Enterprise Fund shall first pay all costs attributable to the auction of the In Rem 1933 Double Eagle and then, in final settlement and in consideration of Mr. Fenton's recovery of the In Rem 1933 Double Eagle, the United States Mint Public Enterprise Fund immediately shall pay Mr. Fenton, by U.S. Government check, an amount equal to one-half of the net proceeds from the auction of the In Rem 1933 Double Eagle.

b. If the United States Mint Public Enterprise Fund and Mr. Fenton agree to sell the coin in a commercially reasonably manner other than public auction, and the coin sells in that manner, then the United States Mint Public Enterprise Fund shall first pay all costs attributable to the sale of the In Rem 1933 Double Eagle and then, in final settlement and in consideration of Mr. Fenton's recovery of the In Rem 1933 Double Eagle, the United States Mint Public Enterprise Fund immediately shall pay Mr. Fenton, by U.S. Government check, an amount equal to one-half of the net proceeds from the sale of the In Rem 1933 Double Eagle.

4. Stephen Fenton and all of his agents, attorneys, or anyone acting on his behalf, are hereby forever barred from asserting any claim, including third party claims, against plaintiff United States of America or any of its agents and employees, including the United States Secret Service, the United States Mint, and the United States Department of Treasury, in connection with, relating to, or arising out of the seizure of the In-Rem 1933 Double Eagle, including but not limited to any claim that the United States did not have probable cause to seize and hold the same.

5. The Government is hereby forever barred from asserting any claim against Stephen Fenton, or any of his employees, in connection with, relating to, or arising out of the In-Rem 1933 Double Eagle.

6. This settlement shall not be deemed to have any precedential significance or effect, legal or otherwise, on any other coin or property of the United States, including any other 1933 Double Eagle that may exist, other than the In-Rem 1933 Double Eagle.

7. The parties agree that neither Mr. Fenton nor the government is entitled to, or will seek, attorneys fees or costs in connection with this case.

8. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.

Dated: New York, New York
January 25, 2001

MARY JO WHITE
United States Attorney for the
Southern District of New York

By: _____
Jane A. Levine (JL 3332)
Assistant United States Attorney
One St. Andrew's Plaza
New York, New York 10007

Attorneys for Plaintiff United States of America

UNITED STATES MINT

By: _____

KRAMER, LEVIN, NAFTALIS & FRANKEL LLP

By: _____
Barry H. Berke (BB 1421)

919 Third Avenue
New York, New York 10022

Attorneys for Claimant Stephen Fenton

_____
STEPHEN C. FENTON

KLJ:2084087.2

Dated: New York, New York
January 25, 2001

MARY JO WHITE
United States Attorney for the
Southern District of New York

By: _____
Jane A. Levine (JL 3332)
Assistant United States Attorney
One St. Andrew's Plaza
New York, New York 10007

Attorneys for Plaintiff United States of America

UNITED STATES MINT

By: _____
DIRECTOR U.S. Mint

KRAMER, LEVIN, NAFTALIS & FRANKEL LLP

By: _____
Barry H. Berke (BB 1421)

919 Third Avenue
New York, New York 10022

Attorneys for Claimant Stephen Fenton

_____
STEPHEN C. FENTON

U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

RECEIVED
FEB 14 2001
CHAMBERS OF
ALVIN K. HELLERSTEIN
U.S.D.J.

February 14, 2001

Hon. Alvin K. Hellerstein
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: United States v. One $20 Gold Coin, 96 Civ. 2527 (AKH)

Dear Judge Hellerstein:

I write to respectfully request that a copy of the final Settlement Agreement in the above matter be filed with the Clerk of the Court for docketing. For convenience, a copy is enclosed herewith.

Respectfully submitted,

MARY JO WHITE
United States Attorney

By: Jane A. Levine
Jane A. Levine
Assistant United States Attorney
Telephone: (212) 637-1063

cc: Barry H. Berke, Esq.
Greg Weinman, Esq.

Docket as is. Do not send to be microfilmed because the Judge is not going to sign it.